

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 469

Introduced by Crosby, 29; Hudkins, 21; Janssen, 15; Jones, 43; Dw.
Pedersen, 39; C. Peterson, 35; Preister, 5;
Thompson, 14

Read first time January 14, 1999

Committee: Transportation

A BILL

- 1 FOR AN ACT relating to telemarketing; to adopt the Telemarketing
- 2 and Prize Promotions Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 13 of this act shall be known
2 and may be cited as the Telemarketing and Prize Promotions Act.

3 Sec. 2. For purposes of the Telemarketing and Prize
4 Promotions Act:

5 (1) Consumer means an actual or prospective purchaser,
6 lessee, or recipient of consumer goods or services bought primarily
7 for use for personal, family, or household purposes;

8 (2) Consumer goods or services means any tangible
9 personal property, merchandise, or services normally used for
10 personal, family, or household purposes and not for resale or for
11 use or consumption in trade or business;

12 (3) Consumer telephone call means a call made by a seller
13 for the purpose of soliciting a sale of any consumer goods or
14 services to the person called, for the purpose of soliciting an
15 extension of credit for consumer goods or services to the person
16 called, or for the purpose of obtaining information that may be
17 used for the direct solicitation of a sale of consumer goods or
18 services to the person called or an extension of credit for such
19 purposes;

20 (4) Prize means anything offered, or purportedly offered,
21 and given, or purportedly given, to a person by chance. Prize does
22 not include an item offered in a promotion for a book, recording,
23 video, multimedia, or similar club in compliance with 16 C.F.R. 425
24 or a continuity plan or single sale of merchandise or service where
25 there is no minimum purchase required;

26 (5) Prize promotion means (a) sweepstakes or other game
27 of chance or (b) an oral or written express or implied
28 representation that a person has won, has been selected to receive,

1 or may be eligible to receive a prize or purported prize;

2 (6) Seller means any person or organization who
3 individually or through salespersons initiates unsolicited consumer
4 telephone calls in order to (a) sell, lease, or rent consumer goods
5 or services, (b) offer gifts or prizes with the intent to sell,
6 lease, or rent consumer goods or services, or (c) represent to a
7 consumer that the consumer has won or will receive a prize by
8 telephonic means or by written notice sent through the mail in
9 which the goods and services and all the material terms of the
10 transaction are not fully described and which require that the
11 consumer contact the seller by telephone to learn about or initiate
12 the transaction;

13 (7) Solicitor means any person who is not the seller of
14 goods and services offering a prize promotion who represents to an
15 individual that the individual has won or will receive a prize;

16 (8) Sponsor means any person on whose behalf a solicitor
17 gives a prize but who is not the seller of goods and services
18 offering a prize promotion;

19 (9) Unsolicited consumer telephone call means a consumer
20 telephone call other than a call made:

21 (a) In response to an express request of the person
22 called;

23 (b) Primarily in connection with an existing debt or
24 contract, payment or performance of which has not been completed at
25 the time of such a call;

26 (c) To any person with whom the seller has an established
27 business relationship; or

28 (d) By a magazine or newspaper publisher or such

1 publisher's agent or employee in connection with such publisher's
2 business; and

3 (10) Verifiable retail value means the price at which the
4 solicitor or sponsor can demonstrate that a substantial number of
5 prizes have been sold within the prior twelve months by a person
6 other than the solicitor in the trade area in which the prize
7 notice is given, or no more than one and one-half times the amount
8 the solicitor or sponsor paid for the prize.

9 Sec. 3. A seller may not obtain or submit for payment a
10 check, draft, or other form of negotiable paper drawn on a
11 consumer's checking, savings, share, or similar account, without
12 that consumer's express verifiable authorization. Such
13 authorization shall be deemed verifiable if any of the following
14 means are employed:

15 (1) Express written authorization by the consumer, which
16 may include the consumer's signature on the negotiable instrument;

17 (2) Express oral authorization which is tape recorded and
18 made available upon request to the consumer's financial institution
19 or to the consumer and which evidences clearly both the consumer's
20 authorization of payment for the goods and services that are the
21 subject of the sales offer and the consumer's receipt of all of the
22 following information:

23 (a) The date of the check, draft, or other form of
24 negotiable paper;

25 (b) The amount of the check, draft, or other form of
26 negotiable paper;

27 (c) The payor's name;

28 (d) The number of check, draft, or negotiable paper

1 payments, if more than one;

2 (e) A telephone number for consumer inquiry that is
3 answered during normal business hours; and

4 (f) The date of the consumer's oral authorization; or

5 (3) Written confirmation of the transaction, sent to the
6 consumer prior to submission for payment of the consumer's check,
7 draft, or other form of negotiable paper that includes:

8 (a) All of the information contained in subdivision (2)
9 of this section; and

10 (b) The procedures by which the consumer can obtain a
11 refund from the seller in the event the confirmation is inaccurate.

12 Sec. 4. (1) In addition to any other right to revoke an
13 offer:

14 (a) The consumer obligated for any part of the purchase
15 price may cancel the telephone sale until midnight of the fifth
16 business day after the day on which the consumer has received
17 written notice from the seller notifying the consumer of his or her
18 right to cancel the telephone sale. Written notice shall include
19 all of the information included in subdivision (2) of section 3 of
20 this act and the procedures by which a consumer may obtain a
21 refund; and

22 (b) The seller shall disclose the refund policy to the
23 consumer orally by telephone, in writing with advertising or
24 promotional material, or with delivery of the products or services,
25 and shall issue a refund within thirty days after the date on which
26 the seller receives returned merchandise or notice of cancellation.
27 A seller who discloses in writing that a sale is made or provided
28 "satisfaction guaranteed", "with free inspection", "no-risk

1 guarantee", or similar words or phrases shall be deemed to meet the
2 requirements of the review and return for refund policy.

3 (2) Subdivision (1)(a) of this section does not apply to
4 a sale in which the seller at a minimum has a policy of giving the
5 consumer the right to review goods or services for a period of at
6 least seven days after the date of delivery, accepting returns or
7 canceling services, and providing a refund for the return of its
8 unused and undamaged merchandise or canceled services.

9 Sec. 5. It shall be unlawful for a seller to procure the
10 services of any third-party delivery, courier, or other pickup
11 service to obtain a consumer's payment for goods, unless the goods
12 are delivered and can be inspected.

13 Sec. 6. It shall be unlawful for a seller to request or
14 receive payment or other consideration, in advance, from a consumer
15 to recover or otherwise aid in the return of money or any other
16 item lost by the consumer in a prior telemarketing transaction.
17 This section shall not apply to services provided to a consumer by
18 an attorney licensed to practice law.

19 Sec. 7. In the case of prize promotions, it shall be
20 unlawful for a seller to fail to provide the following information:

21 (1) The odds of winning or receiving the prize and, if
22 the odds are not calculable in advance, the factors used in
23 calculating the odds;

24 (2) That no purchase and no payment is necessary to win;

25 (3) All material costs or conditions to receive or redeem
26 a prize that is the subject of the prize promotion;

27 (4) The no-purchase or no-payment method of participating
28 in the prize promotion, with either instructions on how to

1 participate or an address or local or toll-free telephone number to
2 which customers may write or call for information on how to
3 participate;

4 (5) The true name and address of the solicitor, sponsor,
5 or seller offering a prize when the consumer is told he or she has
6 won or will receive a prize; and

7 (6) The verifiable retail value of each prize the
8 consumer is told he or she has won or will receive.

9 Sec. 8. A solicitor, sponsor, or seller may not do any
10 of the following:

11 (1) Misrepresent the source of any written prize notice;

12 (2) Represent directly or by implication that the number
13 of individuals eligible for the prize is limited or that an
14 individual has won or will receive a particular prize unless that
15 representation is true; or

16 (3) Misrepresent the value of a prize.

17 Sec. 9. Sellers must maintain records for twenty-four
18 months in compliance with 16 C.F.R. 310.5.

19 Sec. 10. In any civil proceeding alleging a violation of
20 the Telemarketing and Prize Promotions Act, the burden of proving
21 an exemption from the act or an exemption from a definition in the
22 act is upon the person claiming it. In any criminal proceeding
23 alleging a violation of the act, the burden of producing evidence
24 pertaining to a definition or an exemption is upon the person
25 claiming it.

26 Sec. 11. Nothing in the Telemarketing and Prize
27 Promotions Act shall be construed to limit the remedies available
28 to consumers, the Attorney General, or any county attorney under

1 the Uniform Deceptive Trade Practices Act or any other state or
2 federal law.

3 Sec. 12. Any consumer that suffers a loss or harm as a
4 result of a violation of the Telemarketing and Prize Promotions Act
5 may recover actual damages, attorney's fees, court costs, and any
6 other remedies provided by law. The state, on behalf of its
7 residents who have suffered a loss or harm as a result of a
8 violation of the act, may seek actual damages.

9 Sec. 13. A violation of the Telemarketing and Prize
10 Promotions Act is a Class I misdemeanor.